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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

2 Cr. 352 (JSR)

5 JATICK SMITH, et al.,

6 Conference

7 Defendants.

-----x

8 New York, N.Y.
9 March 7, 2023
10 2:45 p.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 RUSHMI BHASKARAN

MARY ELIZABETH BRACEWELL

18 Assistant United States Attorney

19 THOMAS NOOTER

JILL R. SHELOW

20 Attorneys for Defendant Jatick Smith

21 SUSAN G. KELLMAN

CHRSTOPHER LA TRONICA

22 Attorneys for Defendant Sequan Jackson

23 MICHAEL BRADLEY

24 Attorney for Defendant Damon Dore

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APPEARANCES (continued)

LISA SCOLARI

Attorney for Defendant Kaheen Small

NELSON DE LA CRUZ

Attorney for Defendant Hasim Smith

GLEN A. KOPP

Attorney for Defendant Rahmiek Lacewell

THOMAS AMBROSIO

Attorney for Defendant Manuel Pereira

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(Case called)

THE DEPUTY CLERK: Will the parties please identify themselves for the record.

MS. BHASKARAN: Good afternoon, your Honor. Rushmi Bhaskaran and Molly Bracewell for the government.

THE COURT: Good afternoon.

MR. NOOTER: Good afternoon, your Honor. Thomas Nooter, along with Jill Shellow, for Mr. Jatick Smith.

THE COURT: Good afternoon.

MS. KELLMAN: Good afternoon, your Honor. Susan Kellman and Chris La Tronica for Mr. Sequan Jackson, who is seated behind us, your Honor.

THE COURT: Good afternoon.

MS. SCOLARI: Good afternoon, your Honor. Lisa Scolari for Mr. Kaheen Small, who is behind me seated in the courtroom.

THE COURT: Good afternoon.

MR. DE LA CRUZ: Good afternoon, your Honor. Nelson De La Cruz on behalf of Mr. Hasim Smith.

THE COURT: Good afternoon.

MR. BRADLEY: Good afternoon, your Honor. Michael Bradley for Mr. Damon Dore seated here.

THE COURT: Good afternoon.

MR. KOPP: Good afternoon, your Honor. Glen Kopp for Mr. Lacewell. He has the glasses on and the suit in the front

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row.

THE COURT: Good afternoon.

So I want to thank everyone for their excellent papers. And with apologies to a number of counsel who won't be called upon to speak, I really think I have enough on the papers to resolve all the motions, with one possible exception. So really, I only want to hear from counsel on that motion -- I'll get to that in a second -- and then I want to take up anything else that anyone wants to raise, since the trial in this case is now only a few weeks off.

The one motion was the motion of Jatick Smith to suppress the results of the search of his phone that was first conducted without a warrant at the border, at which time an electronic copy of the phone was made that was later searched pursuant to a warrant. And nevertheless, it appears that there's a substantial issue under the Supreme Court's decision in *Riley v. California*. So let me hear first from moving counsel and then from government counsel.

MR. NOOTER: Thank you very much, your Honor.

THE COURT: I don't want you, Mr. Nooter, to repeat what's in your papers, but I was wondering whether you wanted to say anything in response to the government.

MR. NOOTER: Yes. There are a number of things. I probably should have tried to write a reply, because there are actually quite a few things they brought up.

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1 THE COURT: Let me say this to all defense counsel.
2 If anyone thinks I would benefit from reply papers or anything
3 you just forgot -- not a new motion, but anything on the
4 motions that were filed -- since we do have a little time
5 before the trial in early May, I would give you leave to submit
6 that by no later than Monday of next week. And I would put
7 off -- I'm already frankly starting to draft my rulings -- but
8 I would hold off on that, and then get you my rulings, say, by
9 no later than the end of next week. So if you would prefer to
10 go that route, that's fine. But it's not an either/or choice
11 either. Either speak now or send me a reply brief on Monday.

12 MR. NOOTER: Your Honor, I think I would prefer to
13 send a reply brief.

14 THE COURT: Okay. That's fine. So Monday by
15 midnight.

16 MR. NOOTER: Your Honor, could I possibly ask for
17 Tuesday by midnight. I'm going to be traveling.

18 THE COURT: You are greedy. Tuesday at midnight is
19 fine.

20 MR. NOOTER: Thank you.

21 THE COURT: And is there anyone else who wants to do a
22 reply on any of the other motions?

23 Okay. So that will be great.

24 If the government wants to put in a surreply -- and
25 you are not required to -- but if you do -- how many pages do

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1 you want for your reply?

2 MR. NOOTER: Ten, maybe.

3 THE COURT: Sure.

4 So ten pages also for the government on surreply. I
5 do want to get this all decided at least by a bottom line order
6 by Friday so you'll all know where things stand. So surreply
7 by midnight on Thursday.

8 MR. NOOTER: Thank you very much.

9 THE COURT: And by the way, I don't mean to in any way
10 any of the good motions that were filed. I just think I have
11 what I need to resolve them.

12 Is there anything else regarding the trial or anything
13 else that anyone wants to raise at this time?

14 MS. BHASKARAN: Your Honor, the government has
15 information that bears on Mr. Smith's pending bail motion we
16 would like to bring to the Court's attention. And that is that
17 the government on Sunday seized a contraband cell phone from
18 Mr. Smith's cell at the MDC. It's a sole occupancy cell. And
19 this is actually the second contraband cell phone that we have
20 found from Mr. Smith since he's been detained on this case.

21 We received a warrant to review the contents of that
22 phone yesterday, began reviewing the contents of that phone
23 last night. We then came across a potentially privileged
24 communication on that phone, which was in the form of a
25 screenshot of an email with counsel. So the case team then put

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1 pencils down, stopped reviewing the phone. And now that phone
2 is in the process of going through a privilege review, which
3 started this morning.

4 Because of the privilege review, we haven't really
5 been able to dive deep into the phone, but there are some
6 communications that have been turned over to the case team. We
7 think they are incredibly alarming. It shows that the
8 defendant is attempting to communicate with his co-defendants,
9 which itself would be a violation of the bail conditions. He
10 is saying things like people who plead guilty will be his enemy
11 and attempting to dissuade people from resolving their cases.
12 All of this is incredibly, incredibly alarming.

13 We do know, based on phone numbers that we have in the
14 case, that he appears to be in direct communication with Sequan
15 Jackson's girlfriend and also with defendant Damon Dore through
16 his -- excuse me -- he was in contact with Sequan Jackson
17 through his girlfriend's phone.

18 THE COURT: Well, this is obviously a serious matter.
19 What relief are you seeking?

20 MS. BHASKARAN: Your Honor, because there's a pending
21 bail motion with respect to Mr. Smith, we wanted to make sure
22 that the Court had that information before it ruled on that
23 motion. The government may well --

24 THE COURT: I had already determined, independent of
25 that, to deny that motion.

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1 MS. BHASKARAN: Thank you, your Honor.

2 And with respect to the other defendants, we are still
3 looking through the contents of the phone. The government may
4 have future motions with respect to bail with respect to other
5 defendants. We're not there right now. But again, we wanted
6 to apprise the Court of this in light of the what was pending
7 motion.

8 THE COURT: I don't know if counsel wants to say
9 anything about this.

10 Is this the first you are learning of this?

11 MR. NOOTER: Well, we learned about 10, 15 minutes
12 ago.

13 I think we would rather not comment. If the Court has
14 already ruled on the bail motion, I don't think there's
15 anything we would be adding now.

16 THE COURT: That's fine.

17 I mean, there's no other application from the
18 government at this time. I can imagine they might have other
19 applications, but we'll deal with that when it comes up.

20 I think this is a specter that has hung over this case
21 from early on. And in some of my bail rulings where I ruled in
22 favor of defendants, it was despite some suggestions of
23 improper activity of the sort the government has just
24 described. And so, of course, the Court takes this very
25 seriously. But it's an adversary system, and I'm not going to

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1 suggest anything. I'll just wait to see what the government --
2 what, if any, applications they make.

3 Anything else?

4 Thank you very much.

5 (Adjourned)